

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

CHANDRA MARTIN-FRANCIS,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting  
Commissioner of Social Security  
Administration,

Defendant.

NO: 1:14-CV-3190-TOR

ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT

BEFORE THE COURT are the parties' cross-motions for summary judgment (ECF Nos. 14; 18). The Court has reviewed the administrative record and the parties' completed briefing and is fully informed. For the reasons discussed below, the Court grants Defendant's motion and denies Plaintiff's motion.

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## JURISDICTION

The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g); 1383(c)(3).

## STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under §405(g) is limited: the Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). "Substantial evidence" means relevant evidence that "a reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted). In determining whether this standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. If the evidence in the record "is susceptible to more than one rational interpretation, [the court] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district

1 court “may not reverse an ALJ’s decision on account of an error that is harmless.”  
2 *Id.* at 1111. An error is harmless “where it is inconsequential to the [ALJ’s]  
3 ultimate nondisability determination.” *Id.* at 1115 (quotation and citation omitted).  
4 The party appealing the ALJ’s decision generally bears the burden of establishing  
5 that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

### 6 **FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

7 A claimant must satisfy two conditions to be considered “disabled” within  
8 the meaning of the Social Security Act. First, the claimant must be “unable to  
9 engage in any substantial gainful activity by reason of any medically determinable  
10 physical or mental impairment which can be expected to result in death or which  
11 has lasted or can be expected to last for a continuous period of not less than twelve  
12 months.” 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant’s impairment must be  
13 “of such severity that he is not only unable to do his previous work[,] but cannot,  
14 considering his age, education, and work experience, engage in any other kind of  
15 substantial gainful work which exists in the national economy.” *Id.*  
16 § 1382c(a)(3)(B).

17 The Commissioner has established a five-step sequential analysis to  
18 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R.  
19 § 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant’s  
20 work activity. *Id.* § 416.920(a)(4)(i). If the claimant is engaged in “substantial

1 gainful activity,” the Commissioner must find that the claimant is not disabled. *Id.*  
2 § 416.920(b).

3 If the claimant is not engaged in substantial gainful activities, the analysis  
4 proceeds to step two. At this step, the Commissioner considers the severity of the  
5 claimant’s impairment. *Id.* § 416.920(a)(4)(ii). If the claimant suffers from “any  
6 impairment or combination of impairments which significantly limits [his or her]  
7 physical or mental ability to do basic work activities,” the analysis proceeds to step  
8 three. *Id.* § 416.920(c). If the claimant’s impairment does not satisfy this severity  
9 threshold, however, the Commissioner must find that the claimant is not disabled.  
10 *Id.*

11 At step three, the Commissioner compares the claimant’s impairment to  
12 several impairments recognized by the Commissioner to be so severe as to  
13 preclude a person from engaging in substantial gainful activity. *Id.*  
14 § 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the  
15 enumerated impairments, the Commissioner must find the claimant disabled and  
16 award benefits. *Id.* § 416.920(d).

17 If the severity of the claimant’s impairment does meet or exceed the severity  
18 of the enumerated impairments, the Commissioner must pause to assess the  
19 claimant’s “residual functional capacity.” Residual functional capacity (“RFC”),  
20 defined generally as the claimant’s ability to perform physical and mental work

1 activities on a sustained basis despite his or her limitations, *id.* § 416.945(a)(1), is  
2 relevant to both the fourth and fifth steps of the analysis.

3 At step four, the Commissioner considers whether, in view of the claimant's  
4 RFC, the claimant is capable of performing work that he or she has performed in  
5 the past ("past relevant work"). *Id.* § 416.920(a)(4)(iv). If the claimant is capable  
6 of performing past relevant work, the Commissioner must find that the claimant is  
7 not disabled. *Id.* § 416.920(f). If the claimant is incapable of performing such  
8 work, the analysis proceeds to step five.

9 At step five, the Commissioner considers whether, in view of the claimant's  
10 RFC, the claimant is capable of performing other work in the national economy.  
11 *Id.* § 416.920(a)(4)(v). In making this determination, the Commissioner must also  
12 consider vocational factors such as the claimant's age, education and work  
13 experience. *Id.* If the claimant is capable of adjusting to other work, the  
14 Commissioner must find that the claimant is not disabled. *Id.* § 416.920(g)(1). If  
15 the claimant is not capable of adjusting to other work, the analysis concludes with  
16 a finding that the claimant is disabled and is therefore entitled to benefits. *Id.*

17 The claimant bears the burden of proof at steps one through four above.  
18 *Lockwood v. Comm'r of Soc. Sec. Admin.*, 616 F.3d 1068, 1071 (9th Cir. 2010). If  
19 the analysis proceeds to step five, the burden shifts to the Commissioner to  
20 establish that (1) the claimant is capable of performing other work; and (2) such

1 work “exists in significant numbers in the national economy.” 20 C.F.R.  
2 § 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

### 3 **ALJ’S FINDINGS**

4 Plaintiff protectively filed an application for supplemental security income  
5 benefits on May 6, 2008, alleging a disability onset date of December 10, 2006.  
6 Tr. 263-66. Plaintiff’s claim was denied initially and on reconsideration. Tr. 136-  
7 40, 144-47. Plaintiff requested a hearing, Tr. 148-51, and an administrative law  
8 judge (“ALJ”) held hearings on April 22, 2010, and January 21, 2011. Tr. 72-98,  
9 99-109. The ALJ issued a decision on February 11, 2011, finding that Plaintiff  
10 was not disabled under the Act. Tr. 112-28. Plaintiff appealed, and the Appeals  
11 Council remanded the case. Tr. 129-33. Pursuant to the remand order, the ALJ  
12 held a hearing on April 29, 2013, Tr. 39-71, and issued a decision on May 31,  
13 2013,<sup>1</sup> again finding Plaintiff not disabled under the Act. Tr. 17-38.

14 In the updated decision, the ALJ made the following findings. At step one,  
15 the ALJ found that Plaintiff had not engaged in substantial gainful activity since  
16 May 6, 2008, the application date. Tr. 22. At step two, the ALJ found that  
17 Plaintiff had the following severe impairments: osteoarthritis (mild degenerative  
18 changes in the spine), obesity, obstructive sleep apnea, affective disorder, anxiety

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19 <sup>1</sup> The ALJ incorporated the discussion and summary of the evidence in the decision  
20 of February 11, 2011, into the final decision. Tr. 20.

1 disorder/posttraumatic stress disorder (PTSD), and dependent personality disorder.

2 Tr. 22. At step three, the ALJ found that Plaintiff did not have an impairment or  
3 combination of impairments that meets or medically equals a listed impairment.

4 Tr. 23. The ALJ then determined that Plaintiff had the RFC to

5 perform medium work as defined in 20 CFR 416.967(c). The claimant  
6 is able to remember, understand, and carry out instructions or tasks  
7 generally required by occupations with a SVP of 1, 2, 3, or 4. The  
8 claimant can have occasional, superficial interaction with the general  
9 public. The claimant can have occasional interaction with coworkers  
10 and supervisors.

9 Tr. 24. At step four, the ALJ found that Plaintiff had no past relevant work.

10 Tr. 32. At step five, after considering the Plaintiff's age, education, work  
11 experience, and residual functional capacity, the ALJ found Plaintiff could perform  
12 work existing in significant numbers in the national economy in representative  
13 occupations, such as a cleaner, housekeeping, hand packager, cook helper, and  
14 industrial cleaner. Tr. 32-33. Accordingly, the ALJ concluded that Plaintiff was  
15 not disabled under the Social Security Act and denied her claim on that basis. Tr.  
16 33.

17 The Appeals Council denied Plaintiff's request for review on October 8,  
18 2014, Tr. 1-6, making the ALJ's decision the Commissioner's final decision that is  
19 subject to judicial review. 42 U.S.C. §§ 405(g), 1383(c)(3); 20 C.F.R. §§  
20 416.1481, 422.210.

1 **ISSUES**

2 Plaintiff seeks judicial review of the Commissioner's final decision denying  
3 her supplemental security income under Title XVI of the Social Security Act.

4 Plaintiff raises the following two issues for review:

5 (1) Whether the ALJ erred in assessing Plaintiff's credibility; and

6 (2) Whether the ALJ erred in weighing the opinion evidence of Plaintiff's  
7 treatment providers.

8 ECF No. 14 at 12.

9 **DISCUSSION**

10 **A. Adverse Credibility**

11 Plaintiff faults the ALJ for providing impermissible reasons for rejecting her  
12 symptom testimony. ECF No. 14 at 20-26. In support, Plaintiff provides the  
13 following arguments: (1) the ALJ, when finding that Plaintiff's pain complaints are  
14 not supported by objective evidence, failed to consider how Plaintiff's obesity and  
15 depression exacerbated her impairments, *id.* at 20-21; (2) the ALJ faulted Plaintiff  
16 for failing to stop smoking, but the record contains no indication that quitting  
17 smoking would improve her severe impairments, *id.* at 21-22; (3) the ALJ cited to  
18 a few periods of improvement in her symptoms to demonstrate improvement with  
19 treatment; however, these treatment notes do not contradict Plaintiff's reported  
20 symptoms nor show that she is capable of full-time employment, *id.* at 22-24; and



1 (4) the ALJ, when finding that Plaintiff's daily activities and social functioning are  
2 not consistent with the debilitating mental symptoms alleged, failed to consider the  
3 impact of Plaintiff's' psychiatric symptoms, *id.* at 24-26.

4 An ALJ engages in a two-step analysis to determine whether a claimant's  
5 testimony regarding subjective pain or symptoms is credible. "First, the ALJ must  
6 determine whether there is objective medical evidence of an underlying  
7 impairment which could reasonably be expected to produce the pain or other  
8 symptoms alleged." *Molina*, 674 F.3d at 1112 (internal quotation marks omitted).  
9 "The claimant is not required to show that her impairment could reasonably be  
10 expected to cause the severity of the symptom she has alleged; she need only show  
11 that it could reasonably have caused some degree of the symptom." *Vasquez v.*  
12 *Astrue*, 572 F.3d 586, 591 (9th Cir. 2009) (internal quotation marks omitted).

13 Second, "[i]f the claimant meets the first test and there is no evidence of  
14 malingering, the ALJ can only reject the claimant's testimony about the severity of  
15 the symptoms if she gives 'specific, clear and convincing reasons' for the  
16 rejection." *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (quoting  
17 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007)). The Ninth Circuit  
18 has repeatedly rejected the Commissioner's argument that a lesser standard than  
19 "clear and convincing" applies. *See, e.g., Burrell v. Colvin*, 775 F.3d 1133, 1136-  
20 37 (9th Cir. 2014) (rejecting the government's argument that the ALJ need only

1 provide specific reasons for rejecting a claimant's testimony). "General findings  
2 are insufficient; rather, the ALJ must identify what testimony is not credible and  
3 what evidence undermines the claimant's complaints." *Id.* (quoting *Lester v.*  
4 *Chater*, 81 F.3d 821, 834 (9th Cir. 1995)); *Thomas v. Barnhart*, 278 F.3d 947, 958  
5 (9th Cir. 2002) ("[T]he ALJ must make a credibility determination with findings  
6 sufficiently specific to permit the court to conclude that the ALJ did not arbitrarily  
7 discredit claimant's testimony."). In making an adverse credibility determination,  
8 the ALJ may consider, *inter alia*, (1) the claimant's reputation for truthfulness; (2)  
9 inconsistencies in the claimant's testimony or between h[er] testimony and h[er]  
10 conduct; (3) the claimant's daily living activities; (4) the claimant's work record;  
11 and (5) testimony from physicians or third parties concerning the nature, severity,  
12 and effect of the claimant's condition. *Thomas*, 278 F.3d at 958-59.

13 This Court finds the ALJ provided specific, clear, and convincing reasons  
14 supported by substantial evidence for discounting Plaintiff's subjective statements.

15 First, the ALJ found the "longitudinal medical evidence, which reveals, at  
16 most, mild findings on physical examinations and imaging[,] do not corroborate  
17 the claimant's subjective complaints of physical disability." Tr. 26. The ALJ  
18 found that, although Plaintiff alleged chronic pain in all her joints, her complaints  
19 were disproportionate to the benign objective findings, which objective findings  
20 the ALJ detailed at length. Tr. 25-26 (noting that laboratory tests were normal; x-

1 rays were unremarkable; and despite obesity, examinations found Plaintiff had a  
2 normal gait and posture, normal range of motion throughout all joints and upper  
3 and lower extremities, and normal muscle tone and strength). Although the ALJ  
4 cannot reject a claimant's testimony solely because the objective medical evidence  
5 does not support the severity of the alleged impairment, inconsistencies between  
6 Plaintiff's alleged limitations and objective medical evidence—in addition to the  
7 other reasons addressed below—provide a permissible and legitimate reason for  
8 discounting Plaintiff's credibility. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th  
9 Cir. 2001) (“While subjective pain testimony cannot be rejected on the sole ground  
10 that it is not fully corroborated by objective medical evidence, the medical  
11 evidence is still a relevant factor in determining the severity of the claimant's pain  
12 and its disabling effects.”).

13 Although Plaintiff cites to treatment records to demonstrate that her  
14 depression and obesity exacerbated her pain symptoms, the records she cites do not  
15 provide objective medical evidence to support such assertion. Tr. 532 (Dr.  
16 Dougherty's psychological evaluation concludes with the finding of “rule out Pain  
17 disorder associated with both psychological factors and a medical condition” while  
18 opining that “psychological factors may contribute to her pain syndrome.”), Tr.  
19 524 (Dr. Udell notes that self-reports of pain mostly relieved by antidepressants).  
20 Thus, the ALJ—when considering the inconsistencies between Plaintiff's

1 testimony and the *objective* medical evidence presented—did not err when she  
2 considered the alleged effect on Plaintiff’s pain caused by her obesity and  
3 successful treatment of her depression (Tr. 25-26, 31).

4       Second, the ALJ found Plaintiff’s testimony less than credible based on her  
5 failure to follow treatment recommendations. Despite repeated recommendations  
6 by her treatment provider, Dr. Amanda Ryder, to stop smoking, Plaintiff continued  
7 to smoke. Tr. 378 (treatment notes documenting Plaintiff’s smoking habit and the  
8 doctor’s encouragement to quit), 515 (treatment notes document Plaintiff’s  
9 continued smoking habit and provider’s second recommendation to quit). Because  
10 an ALJ may consider a claimant’s unexplained or inadequately explained failure to  
11 follow a prescribed course of treatment in assessing Plaintiff’s testimony, the ALJ  
12 did not err here. *See Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996).

13 Although Plaintiff contends that her smoking habit is not relevant to her severe  
14 impairments, the ALJ reasonably found this recommendation within Dr. Ryder’s  
15 treatment notes relevant when assessing Plaintiff’s credibility, a finding this Court  
16 declines to second guess. *See Moncada v. Chater*, 60 F.3d 521, 525 (9th Cir.  
17 1995) (“We do not retry the case or alter credibility determinations and factual  
18 findings where the evidence is susceptible of more than one rational  
19 interpretation.”).

1 Third, the ALJ found that Plaintiff's mental symptoms improved with  
2 treatment. Tr. 26-27. In making this finding, the ALJ extensively detailed and  
3 cited Plaintiff's treatment records, spanning from December 2007 through October  
4 2012, which records demonstrated that Plaintiff's mental functioning improved and  
5 remained stable on a medication regimen. Tr. 26-27; *see* Tr. 388 ("[Claimant] has  
6 been on the medications for about a month, and feels that it has been helping quite  
7 a bit with her symptoms and stress."), Tr. 391 (noting that claimant reported  
8 medications helped with depressive symptoms), Tr. 437 (noting claimant is "doing  
9 well on the medications"), Tr. 438 (noting that claimant is happy with current  
10 treatment regime), Tr. 443 ("[Claimant] feels that her medications have been  
11 helping quite a bit with her symptoms of depression and stress."), Tr. 444 (noting  
12 that claimant is happy with current regime), Tr. 502 (same), Tr. 527 (noting that  
13 antidepressants help with depression), Tr. 547 (noting that mental impairments  
14 improved with medication), Tr. 550 (noting that claimant still feels depressed on  
15 medication, but less so). Although Plaintiff faults the ALJ for not considering  
16 these records in the context of Plaintiff's overall health, she has failed to  
17 demonstrate that the records cited by the ALJ do not constitute examples of  
18 broader development. *See Garrison v. Colvin*, 759 F.3d 995, 1018 (9th Cir. 2014)  
19 ("While ALJs obviously must rely on examples to show why they do not believe  
20 that a claimant is credible, the data points they choose must *in fact* constitute

1 examples of a broader development to satisfy the applicable ‘clear and convincing’  
2 standard.”). Because this Court finds the cited records demonstrate examples of a  
3 broader development, the ALJ provided another clear and convincing reason for  
4 discounting Plaintiff’s credibility.

5 Finally, the ALJ found inconsistencies between Plaintiff’s alleged  
6 limitations and her actual activity. For instance, although Plaintiff testified to  
7 problems with anxiety, the record showed that she “retains fairly intact social  
8 functioning.” Tr. 27. The ALJ found that Plaintiff reported getting along with  
9 coworkers, supervisors, family, friends, and neighbors; socializing with her in-  
10 laws, brother and one friend; and interacting cooperatively with providers and  
11 examiners. Tr. 27-28. Further, the ALJ found Plaintiff engages in activities that  
12 demonstrate greater functioning than alleged: she is independent in her daily  
13 activities, including driving, shopping, caring for her personal needs, cooking, and  
14 performing household chores; she plays the clarinet, plays video games, and  
15 watches television; and she spends her days taking classes online and caring for her  
16 infant. Tr. 28. Specifically, the ALJ found Plaintiff’s “ability to be a single parent  
17 to such a young child suggest[s] an ability to handle more than just routine  
18 stressors and responsibilities and is inconsistent with her claims of disability.” Tr.  
19 28.

1 Although inconsistencies between a claimant's self-reports and daily  
2 activities can provide a permissible basis for an adverse credibility determination,  
3 Plaintiff rightfully faults the ALJ concluding that these activities are inconsistent  
4 with the impairments described in her testimony and ignoring other evidence in the  
5 record showing that Plaintiff's impairments do interfere with her daily functioning.  
6 *See Garrison*, 759 F.3d at 1016 (holding that the ALJ erred in finding a claimant's  
7 daily activities inconsistent with her pain-related impairments where the ALJ failed  
8 to recognize the claimant was heavily assisted by her mother and must often rest  
9 for several hours after performing her activities). For instance, the record  
10 demonstrates that Plaintiff has difficulty doing things alone and relies on the  
11 support of her children. Tr. 56, 528, 664. Further, Plaintiff is able to complete  
12 chores but only by taking frequent breaks. Tr. 318.

13 Nonetheless, in light of all the other permissible reasons the ALJ provided  
14 for discrediting Plaintiff's testimony, this Court does not find the ALJ has  
15 committed reversible error. *See Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d  
16 1190, 1197 (9th Cir. 2004) (holding that any error that ALJ committed in asserting  
17 one impermissible reason for claimant's lack of credibility did not negate the  
18 validity of the ALJ's ultimate conclusion that the claimant's testimony was not  
19 credible). In sum, despite Plaintiff's arguments to the contrary, the ALJ provided  
20 several specific, clear, and convincing reasons for rejecting Plaintiff's testimony.

**B. Medical Opinions**

Plaintiff also faults the ALJ for improperly rejecting the opinions of her treatment providers. ECF No. 14 at 12-19. Specifically, Plaintiff offers the following arguments: (1) the ALJ, in rejecting the opinion of Dr. Udell, impermissibly relied on only one reason—that Dr. Udell’s opinion was not supported by medical evidence, *id.* at 13-15; (2) the ALJ failed to address the opinion of Dr. Smith, *id.* at 16-17; and (3) the ALJ relied on impermissible reasons for rejecting the opinion of Ms. Elsner, MSW, *id.* at 17-19.

There are three types of physicians: “(1) those who treat the claimant (treating physicians); (2) those who examine but do not treat the claimant (examining physicians); and (3) those who neither examine nor treat the claimant [but who review the claimant’s file] (nonexamining [or reviewing] physicians).” *Holohan*, 246 F.3d at 1201-02 (citations omitted). Generally, a treating physician’s opinion carries more weight than an examining physician’s, and an examining physician’s opinion carries more weight than a reviewing physician’s. *Id.* In addition, the regulations give more weight to opinions that are explained than to those that are not, and to the opinions of specialists concerning matters relating to their specialty over that of nonspecialists. *Id.* (citations omitted).

If a treating or examining physician’s opinion is uncontradicted, an ALJ may reject it only by offering “clear and convincing reasons that are supported by



1 substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).

2 “However, the ALJ need not accept the opinion of any physician, including a  
3 treating physician, if that opinion is brief, conclusory and inadequately supported  
4 by clinical findings.” *Bray*, 554 F.3d at 1228 (quotation and citation omitted). “If  
5 a treating or examining doctor’s opinion is contradicted by another doctor’s  
6 opinion, an ALJ may only reject it by providing specific and legitimate reasons  
7 that are supported by substantial evidence.” *Bayliss*, 427 F.3d at 1216 (citing  
8 *Lester*, 81 F.3d at 830-31).

9 “Where an ALJ does not explicitly reject a medical opinion or set forth  
10 specific, legitimate reasons for crediting one medical opinion over another, he  
11 errs.” *Garrison*, 759 F.3d at 1012. “In other words, an ALJ errs when he rejects a  
12 medical opinion or assigns it little weight while doing nothing more than ignoring  
13 it, asserting without explanation that another medical opinion is more persuasive,  
14 or criticizing it with boilerplate language that fails to offer a substantive basis for  
15 his conclusion.” *Id.* at 1012-13. That being said, the ALJ is not required to recite  
16 any magic words to properly reject a medical opinion. *Magallanes v. Bowen*, 881  
17 F.2d 747, 755 (9th Cir. 1989) (holding that the Court may draw reasonable  
18 inferences when appropriate). “An ALJ can satisfy the ‘substantial evidence’  
19 requirement by ‘setting out a detailed and thorough summary of the facts and  
20 conflicting clinical evidence, stating his interpretation thereof, and making

1 findings.” *Garrison*, 759 F.3d at 1012 (quoting *Reddick v. Chater*, 157 F.3d 715,  
2 725 (9th Cir. 1998)).

3 **1. Mindy Udell, M.D.**

4 Plaintiff first faults the ALJ for rejecting the opinion of Dr. Udell, a treating  
5 physician, who completed a DSHS form in April 2010 and opined that Plaintiff is  
6 limited to 11 to 20 hours of sedentary work per week. ECF No. 14 at 13-15; Tr.  
7 588-89. Plaintiff argues, citing to SSR 96-70, that the ALJ impermissibly rejected  
8 Dr. Udell’s opinion solely because it was inconsistent with the objective medical  
9 evidence. ECF No. 14 at 13-15.

10 The ALJ gave “no weight” to Dr. Udell’s opinion for one reason: Dr. Udell’s  
11 proposed restrictions “are extreme and disproportionate to the essentially  
12 unremarkable longitudinal objective findings.” Tr. 29. In support, the ALJ  
13 highlighted the following:

14 [X]-rays of the thoracic and lumbar spine reveal evidence of only mild  
15 degenerative disc disease at T10-11, T11-12, and l4-5. Imaging was  
16 negative at all other levels (18F10, 13). On physical examinations, the  
17 claimant has consistently demonstrated near full range of motion in  
18 the lumbar spine, including being able to forward flex so that her  
19 fingers touch her toes or the ground. She has had normal neurologic  
20 functioning, characterized by intact gait, sensation, and motor  
strength.

19 Tr. 29. Instead, the ALJ afforded great weight to the opinions of Drs. Ho and  
20 Platter and concluded that Plaintiff retains the functional capacity to perform

1 medium exertional work. Tr. 28-29. Dr. Ho, a physician who conducted a  
2 comprehensive examination of Plaintiff, opined that Plaintiff could lift and carry  
3 50 pounds occasionally and 25 pounds frequently and would have no standing,  
4 walking, sitting, or bending restrictions. Tr. 446-51. The ALJ found this opinion  
5 consistent with the medical evidence. Tr. 29. Dr. Platter, a State agency medical  
6 consultant, opined that Plaintiff could perform medium work. Tr. 477-85. The  
7 ALJ also found this opinion consistent with the medical evidence and the opinion  
8 of Dr. Ho. Tr. 29.

9       This Court finds the ALJ properly rejected the opinion of Dr. Udell.  
10 Because Dr. Udell's opinion was contradicted by the opinions of Drs. Ho and  
11 Platter, the ALJ need only have provided "specific and legitimate reasons that are  
12 supported by substantial evidence." *See Bayliss*, 427 F.3d at 1216. As found by  
13 the ALJ, Dr. Udell's opinion was unsupported by the objective medical evidence  
14 and medical findings. Because this reason provides a specific and legitimate  
15 reason for rejecting an opinion of a treating physician, *see Tonapetyan v. Halter*,  
16 242 F.3d 1144, 1149 (9th Cir. 2001) ("When confronted with conflicting medical  
17 opinions, an ALJ need not accept a treating physician's opinion that is conclusory  
18  
19  
20

1 and brief and unsupported by clinical findings.”), the ALJ provided sufficient  
2 reasoning supported by substantial evidence for rejecting Dr. Udell’s opinion.<sup>2</sup>

3 Although Plaintiff again faults the ALJ for ignoring the alleged aggravating  
4 effect that Plaintiff’s obesity and depression had on her pain symptoms, the  
5 treatment records cited by Plaintiff do not provide the necessary support for her  
6 argument. Regarding her depression, Plaintiff does not cite to any record evidence  
7 demonstrating that her depression aggravates her pain symptoms to such a degree  
8 as to support Dr. Udell’s opined limitations. The record evidence merely  
9 demonstrates that her depression may contribute to her symptoms of pain. *See* Tr.  
10 532, 524. Regarding her obesity, Plaintiff has cited to no evidence that her obesity  
11 caused any additional physical limitations that the ALJ failed to consider.

12 Although obesity can cause limitation of function, *see* SSR 02-10p, 2002 WL  
13 34686281, without citation to evidence in the record, this Court is unable to find  
14 that the ALJ failed to address any additional physical limitations to which  
15 Plaintiff’s obesity contributed. The ALJ did acknowledge that Plaintiff is obese

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16 <sup>2</sup> Plaintiff cites to SSR 96-7p, 1996 WL 374186, for the proposition that an ALJ  
17 may not disregard allegations regarding the intensity and persistence of pain solely  
18 because they are not substantiated by objective medical evidence. However, this  
19 ruling concerns the assessment of a claimant’s credibility when evaluating self-  
20 reported symptoms and is thus inapplicable.

1 and suffers from mild to moderate sleep apnea as a result—a condition which has  
2 improved with the use of a CPAP, or continuous positive airway pressure, device;  
3 however, in considering any physical limitations, the ALJ found that, despite  
4 Plaintiffs’ obesity, Plaintiff’s “physical examinations consistently show normal  
5 gait, generally full range of motion in her joints, and 5/5 motor strength and intact  
6 sensation throughout her upper and lower extremities.” Tr. 26. Accordingly, this  
7 Court does not find error.

## 8 **2. Gayle Smith, D.O.**

9 Plaintiff also faults the ALJ for failing to address the opinion of treating  
10 physician, Dr. Smith, who completed a DSHS form in April 2010 and opined that  
11 Plaintiff is limited to 11 to 20 hours per week of no greater than light work. ECF  
12 No. 14 at 16-17; Tr. 594-95. Citing to SSR 96-8p, Plaintiff asserts that the ALJ  
13 “must always consider and address medical source opinions.” ECF No. 14 at 16.

14 As Plaintiff correctly notes, the ALJ failed to address Dr. Smith’s opinion,  
15 which the government seemingly concedes constitutes error. ECF No. 18 at 9-11;  
16 *see Garrison*, 759 F.3d at 1012 (“Where an ALJ does not explicitly reject a  
17 medical opinion or set forth specific, legitimate reasons for crediting one medical  
18 opinion over another, he errs.”). Instead, the government contends the error was  
19 harmless. ECF No. 18 at 9 (citing *Molina*, 674 F.3d at 1115).

1 Thus, the issue becomes whether the ALJ's failure to address Dr. Smith's  
2 opinion constitutes harmful, as opposed to harmless, error. As recently held by the  
3 Ninth Circuit, the harmless error doctrine applies to an ALJ's failure to mention a  
4 treating source's medical opinion. *Marsh v. Colvin*, 792 F.3d 1170, 1172-73 (9th  
5 Cir. 2015). "[W]here the magnitude of an ALJ error is more significant, then the  
6 degree of certainty of harmlessness must also be heightened before an error can be  
7 determined to be harmless." *Id.* at 1173. "In order words, the more serious the  
8 ALJ's error, the more difficult it should be to show the error was harmless." *Id.*

9 This Court finds the ALJ's failure to address Dr. Smith's opinion, although  
10 an error, is harmless in light of the ALJ's unreserved rejection of Dr. Udell's  
11 similar opinion. As stated above, the ALJ rejected Dr. Udell's April 2010 DSHS  
12 form opinion that Plaintiff would be limited to 11 to 20 hours of sedentary work  
13 per week because it was unsupported by objective medical evidence and  
14 contradicted by other opinion evidence. Instead, the ALJ relied on the  
15 contradictory opinions of Drs. Ho and Platter, which the ALJ found were  
16 consistent with the overall medical evidence. It is reasonable to find that the  
17 ALJ's failure to address the opinion of Dr. Smith is harmless because the ALJ  
18 undoubtedly would have rejected Dr. Smith's opinion—similarly opining in April  
19 2010 that Plaintiff would be limited to 11 to 20 hours of work per week, which  
20 opinion was issued on a DSHS form—as being similarly unsupported by evidence

1 in the record. *See Molina*, 674 F.3d at 1121-22 (“An ALJ’s failure to comment  
2 upon lay witness testimony is harmless where ‘the same evidence that the ALJ  
3 referred to in discrediting [the claimant’s claims also discredits [the lay witness’]  
4 claims.’”). And as Defendant notes, the ability to do light work generally  
5 encompasses the ability to do sedentary work, ECF No. 18 at 10 (citing 20 C.F.R.  
6 § 416.967(b)); thus, there is no reason to think the ALJ would have treated the two  
7 opinions differently. Although the Court acknowledges that the magnitude of the  
8 ALJ’s error in failing to mention a treating physician’s opinion is high, the degree  
9 of harmlessness outweighs any harm given the specific facts here. The ALJ’s  
10 failure to address Dr. Smith’s opinion, although an error, is harmless because it is  
11 “inconsequential to the ultimate nondisability determination.” *Molina*, 674 F.3d at  
12 1115. Accordingly, this Court does not find reversible error.

### 13 **3. Sandra Elsner, MSW**

14 Finally, Plaintiff faults the ALJ for improperly rejecting the opinion of Ms.  
15 Elsner, a social worker, who, in December 2008, completed a DSHS form and  
16 opined that Plaintiff would be unable to work because of her anxiety, overly-  
17 emotional state, and the fact that she is easily overwhelmed. ECF No. 14 at 17-19;  
18 *see* Tr. 581.

1 The ALJ gave “no weight” to Ms. Elsner’s opinion.<sup>3</sup> Tr. 30. First, the ALJ  
2 noted that Ms. Elsner is not an acceptable medical source. Tr. 30. Instead, the  
3 ALJ afforded greater weight to the contradictory opinions of Drs. Billings and  
4 Dougherty, both of whom are acceptable medical sources. Tr. 30. Second, the  
5 ALJ—noting that Ms. Elsner did not cite to any examination findings or treatment  
6 records—found that Ms. Elsner’s opinion was “based solely on [Plaintiff’s] report  
7 that she is anxious and overly emotional.” Tr. 30. Third, the ALJ found that Ms.  
8 Elsner’s opinion was inconsistent with Plaintiff’s daily activities. Tr. 30. Finally,  
9 the ALJ found Ms. Elsner’s opinion was controverted by the mild radiographic and  
10 physical examination findings. Tr. 30.

11 Medical sources such as social workers and therapists, are not “acceptable  
12 medical sources;” rather, these sources are more appropriately characterized as  
13 “other sources” and their opinions may be properly discounted if the ALJ provides  
14 “germane reasons” for doing so. *Molina*, 674 F.3d at 1111. Such “other source”  
15 opinions “must be evaluated on the basis of their qualifications, whether their  
16 opinions are consistent with the record evidence, the evidence provided in support  
17 of their opinions, and whether the source has a specialty or area of expertise related  
18 to the individual’s impairment.” SSR 06-03p, 2006 WL 2329939, at \* 4.

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19 <sup>3</sup> The ALJ mistakenly refers to Ms. Elsner as Ms. Edner; however, the ALJ  
20 correctly cites to Ms. Elsner’s December 2008 opinion.



1 This Court finds the ALJ provided germane reasons for rejecting the  
2 opinions of Ms. Elsner. First, the ALJ reasonably afforded greater weight to the  
3 opinions of Drs. Billing and Dougherty, both acceptable medical sources. SSR 06-  
4 03p, 2006 WL 2329939, at \*5 (“The fact that a medical opinion is from an  
5 ‘acceptable medical source’ is a factor that may justify giving that opinion greater  
6 weight than an opinion from a medical source who is not an ‘acceptable medical  
7 source’ because, as we previously indicated . . . ‘acceptable medical sources’ ‘are  
8 the most qualified health care professionals.’”).

9 Second, noting that Ms. Elsner’s report did not cite to any examination  
10 findings or treatment records, the ALJ properly rejected the opinion as it was  
11 largely based on Plaintiff’s subjective reporting. *See Ghanim*, 763 F.3d at 1162  
12 (“If a treating provider’s opinions are based ‘to a large extent’ on an applicant’s  
13 self-reports and not on clinical evidence, and the ALJ finds the applicant not  
14 credible, the ALJ may discount the treating provider’s opinion.”).

15 Finally, and relatedly, the ALJ found Ms. Elsner’s opinion unsupported by  
16 clinical findings. *Batson*, 359 F.3d at 1195 (“[A]n ALJ may discredit treating  
17 physician’s’ opinions that are conclusory, brief, and unsupported by the record as a  
18 whole . . . or by objective medical findings.”).

19 Accordingly, because the ALJ provided germane reasons for rejecting the  
20 opinion of Ms. Elsner, this Court does not find error.

1 **IT IS ORDERED:**

2 1. Plaintiff's Motion for Summary Judgment (ECF No. 14) is **DENIED**.

3 2. Defendant's Motion for Summary Judgment (ECF No. 18) is

4 **GRANTED.**

5 The District Court Executive is directed to file this Order, enter

6 **JUDGMENT** for Defendant, provide copies to counsel, and **CLOSE** the file.

7 **DATED** September 22, 2015.



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A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE  
United States District Judge